



COUNTY OF LOS ANGELES
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ROBERT E. KALUNIAN
Acting County Counsel

January 6, 2010

TO: SACHI A. HAMAI
Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: JOHN F. KRATTLI 
Senior Assistant County Counsel

RE: **Alameda Corridor Transportation Authority v. County of
Los Angeles**
Los Angeles Superior Court Case No. BC 389 904

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisor's agenda.

JFK:rfm

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation. Authorize settlement of the matter entitled Alameda Corridor Transportation Authority v. County of Los Angeles, Los Angeles Superior Court Case No. BC 389 904, in the amount of \$160,000, and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Department of Public Works' budget.

This lawsuit concerns allegations that the Department of Public Works breached a contract when the Department did not accept ownership and maintenance of a storm drain.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Alameda Transportation Corridor Authority v. County of Los Angeles, et. al.
CASE NUMBER	BC 389 904
COURT	Los Angeles Superior Court
DATE FILED	April 30, 2008
COUNTY DEPARTMENT	Department of Public Works
PROPOSED SETTLEMENT AMOUNT	\$ \$160,000
ATTORNEY FOR PLAINTIFF	Kevin Collins Alston & Bird LLP
COUNTY COUNSEL ATTORNEY	Rosa Linda Cruz Senior Deputy County Counsel
NATURE OF CASE	<p>Breach of Contract: The County's June 19, 2001 Cooperative Agreement No. 73412 with ACTA, and a 2003 addendum thereto (together, "the contract") obligated ACTA to design and construct the Anaheim Street Drain and Pumping Station ("the Project"). The County's duties under the contract were to: (1) pay ACTA a portion of the cost of the Project; (2) accept ownership of the Project; and (3) operate and maintain the Project.</p> <p>The Project was completed in January 2006. ACTA alleged the County breached the contract by</p>

refusing to accept ownership of and responsibility for the operation and maintenance of the Project, and by refusing to pay the costs of enhancements to the Project. ACTA sought a total of \$513,000 in damages.

The County contended the features ACTA claimed as "enhancements" should have been included in the original design of the Project as standard features. The County also disputed whether it should accept, own and maintain the Project since the County and ACTA both believed the soil around the drain is contaminated and could not agree to an allocation between the parties of responsibility for the potential future environmental remediation of portions of the Project.

Due to the risks and uncertainties of litigation, the Department of Public Works and County Counsel propose a full and final settlement in the amount of \$160,000

PAID ATTORNEY FEES, TO DATE	\$	103,466
PAID COSTS, TO DATE	\$	8,830



Summary Corrective Action Plan

County of Los Angeles Department of Public Works



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Claim/lawsuit:	Alameda Corridor Transportation Authority
Date of incident/event:	Contract, not applicable.
Briefly provide a description of the incident/event:	Alameda Corridor Transportation Authority (ACTA) contracted with Public Works to design and construct the Anaheim Street Drain and Pump Station. ACTA alleges that Public Works breached its obligations under Cooperative Agreement No. 73412 by refusing to accept ownership of and responsibility for the operation and maintenance of the Anaheim Street Drain and Pump Station. ACTA operated and maintained the Anaheim Street Drain and Pump Station until it was transferred to the County on December 15, 2008.

1. Briefly describe the root cause of the claim/lawsuit:

Resistance from Public Works in accepting ownership and maintenance of the Anaheim Street Drain and Pump Station arose from knowledge that portions of the project site were contaminated. However, this knowledge of contamination issues predated the agreement with ACTA and cannot be used as a basis to refuse ownership and maintenance of the Anaheim Street Drain and Pump Station.

2. Briefly describe recommended corrective actions:

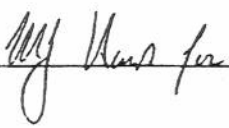

(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

By December 31, 2009, a departmental memorandum will be sent to divisions that are responsible for coordinating and managing projects with other jurisdictions and/or agencies reminding them to ensure that a Preliminary Environmental Site Screening is conducted during the project concept development phase. This will ensure that the potential risks of hazardous materials are considered prior to entering into any long term financial or maintenance commitments. If hazardous materials are found, the responsible program manager will review the circumstances with County Counsel to ensure that the matter is properly addressed in the cooperative agreement including the possible inclusion of an indemnification clause to relieve the County of the liability associated with the presence of hazardous materials.

County of Los Angeles Department of Public Works
Summary Corrective Action Plan

3. State if the corrective actions are applicable to only your department or other County departments:
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- ☒ Potentially has a Countywide implication.
- ☐ Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- ☐ Does not appear to have Countywide or other department implications.

Signature: (Risk Management Coordinator)	Date:
Steven G. Steinhoff 	12/10/09
Signature: (Director)	Date:
Gail Farber 	12-14-09.

RS:psr

P4:VACTA SCAP4



**DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN**

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

LAWSUIT OF: Alameda Corridor Transportation Authority.

INCIDENT DATE: Contract, not applicable.

INCIDENT LOCATION: No incident location.

RISK ISSUE:

Public Works breached its obligations under Cooperative Agreement No. 73412 by refusing to accept ownership of and responsibility for the operation and maintenance of the Anaheim Street Drain and Pump Station.

INVESTIGATIVE REVIEW:

Alameda Corridor Transportation Authority (ACTA) contracted with Public Works to design and construct the Anaheim Street Drain and Pump Station. ACTA alleges that Public Works failed to accept ownership of and responsibility for the operation and maintenance of the Anaheim Street Drain and Pump Station and, therefore, breached the terms of the agreement.

Resistance from Public Works in accepting ownership and maintenance of the Anaheim Street Drain and Pump Station arose from knowledge that portions of the project site were contaminated. However, this knowledge of contamination issues predated the agreement with ACTA and cannot be used as a basis to refuse ownership and maintenance of the Anaheim Street Drain and Pump Station.

ACTA operated and maintained the Anaheim Street Drain and Pump Station until it was transferred to the County on December 15, 2008.

POLICY ISSUES:

Contract agreements require identification and thoughtful planning of how to manage potential risks. Knowing of the likely existence of soil contamination on-site should have led to discussions amongst the parties to the agreement on how to apportion this risk, including insurance and indemnity provisions in the agreement.

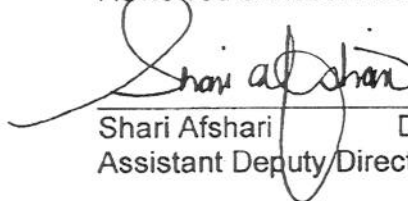
DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN

CORRECTIVE ACTION:

Adhere to the following corrective action plan:

By December 31, 2009, a Departmental memo will be sent to Divisions that are responsible for coordinating and managing projects with other jurisdictions and/or agencies reminding them to ensure that a Preliminary Environmental Site Screening (PESS) is conducted during the project concept development phase. This will ensure that the potential risks of hazardous materials are considered prior to entering into any long term financial or maintenance commitments. If hazardous materials are found, the responsible program manager will review the circumstances with County Counsel to ensure that the matter is properly addressed in the cooperative agreement including the possible inclusion of an indemnification clause to relieve the County of the liability associated with the presence of hazardous materials.

Reviewed & Recommended

 12/10/09
Shari Afshari Date
Assistant Deputy Director

Approved

 12-10-2009
Patrick V. DeChellis Date
Deputy Director

RS:psr
P4:VACTA CAP